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ENERGY CRISIS INTERVENTION PROGRAM (ECIP)

a. Legal Requirements

- i. CSD must demonstrate the fiscal accountability of the federal LIHEAP funds it distributes.

The federal LIHEAP statute directs CSD, as the State recipient of the block grant funds, to make sure that all LIHEAP dollars are spent appropriately. In its annual certification, CSD must certify that

"such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this subchapter, including procedures for monitoring the assistance provided"¹

Federal regulations clarify that the State's fiscal control and accounting procedures "must be sufficient to ... permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of the statute authorizing the block grant."²

In turn, the State Legislature directs CSD "to assume administrative responsibility for" the LIHEAP block grant.³ State law characterizes the corpus as a "trust fund,"⁴ and directs CSD to establish "proper state fiscal controls over federal block grant funds."⁵

- ii. Federal law places a strict restriction on the amount of non-emergency weatherization activities funded with LIHEAP dollars.

The federal law governing the LIHEAP block grant identifies several purposes for the block grant monies – some of the purposes are mandatory and others are simply permitted.⁶

¹ 42 U.S.C. § 8624(b)(10)[emphasis added].

² 45 CFR Part 96.30(a)[emphasis added].

³ Govt. Code § 16366.4(a).

⁴ Govt. Code § 16366.6(b).

⁵ Govt. Code § 16366.7(b).

⁶ For example, LSPs *must* conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the LIHEAP benefits. See 42 USC § 8624(b)(3). On the other hand, States *may* make energy assistance payments either to the households or the energy supplier. See 42 USC § 8624(b)(2) & (7).

Even though some activities are mandatory, the federal places caps on certain activities to limit the amount of those activities supported by LIHEAP dollars.

Key to this discussion is that Congress placed an express limitation on the amount of funds to be used for low-cost residential weatherization activities or other cost-effective energy-related home repair for low-income households. Even though these weatherization activities are mandatory,⁷ no more than fifteen percent of the LIHEAP funds allotted to the State may be used for those purposes. A State may apply for a waiver to use up to twenty-five percent of its LIHEAP funds for weatherization, but *only upon a showing that*:

1. The number of households receiving non-weatherization services in the State will not decrease,
2. The aggregate amount of benefits received by all households will not decrease, and
3. The *weatherization activities have been demonstrated to produce measurable savings in energy expenditures in low income households.*⁸

Even with the waiver, the intent of Congress is clear: weatherization activities supported by the federal block grant are subject to a strict limitation.

- iii. The federal LIHEAP statute requires the State to provide assistance to low-income individuals to resolve an energy crisis.

As a recipient of the federal LIHEAP block grant, the State is required to intervene in energy crisis situations. Because CSD does not operate its own crisis program directly, and because CSD authorizes the LSPs to spend ECIP monies through the annual contracts, *CSD has impliedly delegated its responsibility to intervene in energy crisis situations to the LSPs.*

It is mandatory for the State to reserve LIHEAP funds until March 15 of each year for an energy crisis intervention program (ECIP). At its option, the State may continue the energy crisis intervention program throughout the year.⁹ However, the amount that the State allocates to ECIP is not subject to a federal cap. Instead, the federal law directs the State to allocate "a reasonable amount based on data from prior years" to ECIP.¹⁰ The State therefore has a significant amount of discretion in designating the unrestricted amounts of the LIHEAP funds to provide energy crisis intervention services, to ensure a timely and effective crisis program.

⁷ 42 USC § 8624(b)(1)(C).

⁸ 42 USC § 8624(k).

⁹ 42 USC § 8623(c) & Govt. Code § 16367.5(e).

¹⁰ 42 USC § 8623(c).

- iv. The ECIP program must provide timely and effective assistance that will resolve the energy crisis.

Federal law requires that the monies allocated to ECIP be used to provide "timely and effective" assistance to eligible households "that will resolve the energy crisis." "Timely" is further defined as:

- 1) "not later than 48 hours" after a household applies, *or*
- 2) "not later than 18 hours" after a household applies *and* the household is in a life-threatening situation.

LSPs are further required to implement a program that is:

- 1) Geographically accessible to all households in the service area,
- 2) Physically accessible to disabled individuals, either by providing transportation or in-home application services, unless the emergency makes accessibility impracticable.¹¹

- v. Federal law sets the criteria for the appropriate use of ECIP monies.

Despite the discretion afforded to the States over the amount of LIHEAP monies allocated to ECIP, federal law dictates three sets of criteria which define the circumstances in which monies reserved to ECIP may be lawfully spent.

First, the monies must be spent only by entities that are qualified to provide crisis services. In order for an LSP to claim costs under ECIP, it must:

1. Be *experienced in administering* energy crisis programs;
2. Be *experienced in assisting low-income individuals* in the area to be served;
3. Have the *capacity to undertake* a timely and effective energy crisis intervention program; and
4. Have the *ability to carry out* the energy crisis intervention program in local communities.¹²

Second, energy crisis intervention monies may only be spent to resolve weather-related and supply shortage emergencies and other household energy-related emergencies. Federal law defines "energy crisis" as such,¹³ and further defines "emergency" as:

(A) a natural disaster;

¹¹ 42 USC § 8623(c)(1), (2) & (3).

¹² 42 USC § 8623(c).

¹³ 42 USC § 8622(3). State regulation defines energy crisis exactly the same. See 22 CCR § 100800(h).

- (B) a *significant* home energy supply shortage or disruption;
- (C) a significant increase in the cost of home energy, as determined by the Secretary;
- (D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;
- (E) a significant increase in participation in a public benefit program ..., as determined by the head of the appropriate Federal agency;
- (F) a significant increase in unemployment ... as determined by the Secretary of Labor; or
- (G) an event meeting such criteria as the Secretary, in the discretion of the Secretary, may determine to be appropriate."¹⁴

From this definition, federal law clearly intends the ECIP program to be implemented – and ECIP monies to be spent – following an official declaration of emergency by a federal, state or local official. Even so, this definition also implies that an official declaration of emergency is not necessary for an event to qualify for ECIP assistance as an energy-related emergency, namely those that may arise under categories (A) & (B) above. For example, a natural disaster may include fire or flooding that only affects one household or a localized community, below the severity warranted for even a local declaration of disaster. In addition, a "significant home energy supply shortage or disruption" may be triggered by the receipt of a delinquent utility bill or shut-off notice to an individual household.

Recognizing that there are some bona fide emergencies that are not officially declared, federal law directs the state to describe the criteria for such emergencies.¹⁵ In the 2007 LIHEAP State Plan, CSD states that it "will use the federal definition of a crisis ... which is 'weather-related and supply shortage emergencies and other household energy related emergencies.'"¹⁶

Therefore, whether or not an event has been officially declared as an emergency, an emergency within the definition of federal law must exist before the expenditure of ECIP monies is allowed.¹⁷ State law underscores this requirement, stating that ECIP "funds shall only be used for emergency assistance."

Thirdly, the household must be eligible to receive ECIP benefits. Federal law further directs the State to describe the eligibility requirements for each type of assistance provided through the LIHEAP program, including the criteria for

¹⁴ 42 USC § 8622(1)[emphasis added].

¹⁵ 42 USC § 8624(c)(1)(A).

¹⁶ 2007 LIHEAP Detailed Model Plan, p. 11.

¹⁷ Govt. Code § 16367.5(e).

eligibility under ECIP.¹⁸ In state law and the 2007 LIHEAP State Plan, CSD restricts the use of ECIP funds only for emergency assistance – based on the above-referenced federal definition of emergency – to individuals that meet the regular LIHEAP eligibility criteria *and* who give evidence of at least one of the following conditions:

- (1) Proof of utility shutoff notice.
- (2) Proof of energy termination.
- (3) Insufficient funds to establish a new energy account.
- (4) Insufficient funds to pay a delinquent utility bill.
- (5) Insufficient funds to pay the cost of space heating devices where no alternative source of space heating is reasonably available.
- (6) Insufficient funds to pay for essential firewood, oil, or propane.
- (7) Insufficient funds to pay for the cost of emergency repairs to heating and cooling units, the emergency replacement of heating and cooling units, or both.
- (8) Insufficient funds to pay energy costs for a household where a household member's medical condition requires use of life support or climate and temperature control systems.¹⁹

In sum, ECIP funds may be used only by 1) *qualified LSPs* to provide 2) *emergency assistance* to 3) *eligible households*.

- vi. LSPs must maintain evidence of all three criteria to support the allowability and allocability of costs under ECIP.

As stated above, CSD is responsible to establish systems and standards of fiscal accountability to trace funds to a level of expenditure. In addition, it is an indisputable and fundamental principle of federal administrative law and block grants management that each LSP is responsible to document its costs, and bears the burden of demonstrating the allowability and allocability of all costs that it claims under a block grant.²⁰ Therefore, the LSPs are responsible to maintain sufficient documentation that each claim under ECIP meets the three sets of criteria outlined in federal law, i.e., a qualified LSP, the existence of an emergency, and the demonstration of eligibility by the household.

b. Recommendations

- i. CSD should establish additional criteria for designating a bona fide individual (i.e., not officially declared) emergency.

¹⁸ 42 USC § 8624(c)(1)(A).

¹⁹ Govt. Code § 16367.5(e).

²⁰ Texas Migrant Council, Inc., DAB No. 1743, at 3 (2000).

Per federal law, CSD is directed to articulate the criteria for designating an emergency. Although state law and the state plan reference back to the federal definition, it leaves open for interpretation – or misinterpretation – how to identify a “natural disaster” or “significant home energy supply shortage or disruption” when it is not accompanied by an official declaration of emergency.

Fortunately, providing written proof of six of the eight eligibility requirements prescribed by state law would likely serve the dual purpose of substantiating a bona fide individual emergency. Proof of 1) a utility shutoff notice, 2) energy termination, 3) insufficient funds to establish a new energy account, 4) insufficient funds to pay a delinquent utility bill, 5) insufficient funds to pay for essential firewood, oil, or propane, or 6) insufficient funds to pay energy costs for a household where a household member’s medical condition requires use of life support or climate and temperature control systems, all are likely to establish proof that a significant home energy supply shortage or disruption will result in an imminent energy crisis if the applicant does not receive emergency assistance.

However, simply having insufficient funds to pay for the installation, repair or replacement of 1) space heaters or 2) heating and cooling units is not likely, without more, to substantiate an emergency. Rather, one would need to also demonstrate that the missing or broken appliance was “significant,” say, due to present weather conditions that rendered the situation an “energy crisis.” Without anything to demonstrate that the missing or inoperable equipment is “significant” or an “energy crisis,” then the weatherization activity should be deemed “non-emergency,” and charged against the regular LIHEAP weatherization program to the extent those funds are available.

- ii. CSD should ensure the qualifications and capacity of the LSPs to carry out a timely and effective energy crisis intervention program.

Initially, CSD should embark on an information gathering exercise to inventory the extent to which each LSP is qualified to expend ECIP funds, and the capacity to deliver emergency assistance that will resolve the energy crises in its service area. CSD should facilitate a policy discussion with the LSPs and ultimately reach a decision about each LSP’s responsibility to plan and implement an energy crisis intervention program that meets the minimum requirements of federal law. CSD’s ability to provide fiscal accountability over the ECIP funds is keenly important to prevent future misuse of government funds and substantiate the certifications that CSD makes in its annual LIHEAP State Plan.